ORIGINAL

Before the
FEDERAL, COMMUNICATIONS COMMISSION
Washington, **D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

REPLY COMMENTS

of the

ALLIANCE OF
INCUMBENT RURAL, INDEPENDENT TELEPHONE COMPANIES

and the

INDEPENDENT ALLIANCE

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SUMMARY

The Rural Companies submit these Reply Comments in the Commission's proceeding examining the potential for a unified intercarrier compensation plan. The adoption of any new intercarrier compensation framework, including a bill-and-keep approach, presents issues that have not been addressed fully in this proceeding. The general proposals and policy questions raised by the *NPRM* have not provided a record upon which a rational plan can be developed with respect to intercarrier compensation mechanisms with the Rural Companies.

The Rural Companies urge the Commission to focus the proceeding with an explicit proposal that would provide the industry with the opportunity to evaluate the proposal and all potential effects. Any changes in intercarrier or access charge compensation (1) will require the development and incorporation of an alternative compensation source that can replace the former cost recovery, (2) must preserve the universal service achievements that are the result of the current plan, and (3) should avoid the introduction of some new form of unworkable or counter-productive mechanism. It would be premature to introduce a bill-and-keep approach on a piecemeal basis or to encourage further arbitrage of existing access charge compensation.

Some parties have attempted to utilize this proceeding improperly to distort the meaning and application of existing interconnection requirements. Some commenting parties have attempted to exploit unauthorized arrangements that large Bell Companies have attempted to impose on small, rural LECs. Bell Companies do not have any right to negotiate interconnection on behalf of small LECs. The Bell Companies have attempted to establish themselves as the mandatory, central interconnection point for all carriers and have attempted to deny small LECs of any opportunity (a) to provide their own interconnection services, (2) to design and provision their own network interconnection, and (3) to negotiate their own destiny, as are their rights.

Interconnection policy must prohibit this improper and anti-competitive behavior.

Other commenting parties have suggested interconnection arrangements for small LECs that go well beyond reasonable obligations. The interconnection obligations of rural incumbent LECs cannot extend beyond their **own** incumbent networks and local service offerings. The Rural Companies set forth in these Reply Comments a set of facts regarding the technical operations and obligations of rural LECs that should guide the Commission in its evaluation of interconnection policy.

Before the
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Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. **01-92**
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REPLY COMMENTS OF THE
ALLIANCE OF INCUMBENT RURAL INDEPENDENT TELEPHONE COMPANIES
AND THE INDEPENDENT ALLIANCE

Pursuant to the Commission's ***Notice of Proposed Rulemaking,*** FCC *0*1-**132,** released April 27, **2001** in this proceeding ("*NPRM*"), the Alliance of Incumbent Rural Independent Telephone Companies' and the Independent Alliance[2] (collectively referred to as the "Rural Companies") respectfully submit these Reply Comments.

The Rural Companies have formed for the purposes of **(1)** providing its members with the opportunity to respond to concerns that arise as a result of the direct and secondary effects of a change in intercarrier revenue sources; **(2)** ensuring that the record in this proceeding is not clouded by potentially misleading and inaccurate comments; and **(3)** ensuring that each member has an opportunity to participate collectively or individually in any subsequent review or other proceedings that may be necessary.

As a result of (1) the lack of any definite plan or rules for comment, (2) the theoretical nature of the compensation proposals, and **(3)** the widely diverse and opposing positions of the

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[1] The Alliance previously filed Reply Comments on March **12, 2001** in the Commission's proceeding examining the Rural Task Force recommendation regarding Universal Service Support for rural telephone companies and the Multi-Association Group ("MAG") proposal.

[2] The Alliance filed a Petition for Reconsideration and/or Clarification on June **14,2001,** in response to the ***Order on Remand and Report and Order*** regarding compensation for ISP-bound traffic released April **27, 2001,** in CC Docket Nos. **96-98** and **99-68.**

commenting parties, this proceeding has not provided the Commission with any rational policy direction to proceed without first narrowing and focusing the proceeding on a clear and explicit proposal. There is no record of facts before the Commission upon which some new compensation approach could rationally be adopted. Any resolution will require the development of an as-yet-unarticulated, modified approach that is consistent with the statutory requirements, established policy, rational cost recovery, and rate design for rural LEC service providers.

I. ANY CHANGES IN INTERCARRIER COMPENSATION ARRANGEMENTS MUST ADDRESS THE OVERALL COST RECOVERY OF CARRIERS.

Any restructuring of the intercarrier compensation arrangements must be reconciled with the fact that intercarrier compensation revenues are an integral part of the overall cost recovery of rural LECs. This cost recovery source is a critical component of cost recovery for higher cost, rural telephone companies.

The commenting parties understand that the framework for intercarrier settlements overlaps with the framework for access charges. Under the intercarrier compensation plans that have emerged from the Commission's local competition rules, some intercarrier traffic is indistinguishable from access traffic. Accordingly, changes in the intercarrier system will force changes in access charge revenue sources for rural companies serving the nation's high cost to serve areas.

The collateral result would have a significant adverse impact on the rates and overall cost recovery for these rural carriers and their subscribers. Shifts in cost recovery would result in major rate impacts for users across the nation.[3] Accordingly, any sustainable proposal for

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[3] NECA at 5; NTCA at 9-10; GVNW at Apps. B and D; Western Alliance at 8-9; Focal at 41; Time Warner Telecom at 25, Sprint at 22; Regulatory Commission of Alaska at 2; and (continued...)

restructuring (1) must incorporate alternative cost recovery sources that can replace the former sources, (2) must preserve the universal service achievements that are the result of the existing intercarrier compensation arrangements, and **(3)** should avoid the introduction of some new form of unworkable or counter-productive mechanism. The comments and record before the Commission thus far do not provide sufficient insight into the resolution of these interrelated goals.

It is not clear at this point whether a restructuring (including forms of "bill and keep") *can* produce a plan that is competitively fair, distributes cost recovery among all users of the network in a fair and efficient manner, and avoids a new set of arbitrage and loophole opportunities for carriers and users. Regardless of the potential mechanics, the amount of cost recovery for the generally higher cost, rural telephone companies that would have to be addressed by a replacement source cannot successfully be absorbed into a universal service mechanism.[4] Over reliance on an ill-conceived, counter-productive form of universal service support in a "portability" mode would not produce the level of reliable cost recovery that will be necessary for carriers to invest in infrastructure and networks that will support future, advanced services in the higher cost to serve areas of the Rural Companies.

Commercial Mobile Radio Service ("CMRS") licensees have argued that the Commission should utilize its distinct authority over CMRS to force a bill-and-keep approach for wireless-wireline interconnection arrangements.[5] Because the Commission has prescribed a geographic

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[3](...continued)
Century Telecom at **6.**

[4] ***See,*** e.g., Alltel at **13.**

[5] **See,** *e.g.*, Verizon Wireless at **3-14;** Voicestream Wireless at **14-15;** CTIA at 3-15; and (continued...)

area for termination of CMRS traffic on LEC networks that is based on the boundaries of large Major Trading Areas ("MTAs"), substantial amounts of traffic that wireless carriers terminate on LEC networks is equivalent to interexchange traffic for wireline carriers.[6] Accordingly, the existing rules already foster a regulatory arbitrage opportunity for wireless carriers that terminate traffic pursuant to interconnection and pay **only** transport and termination in comparison to interexchange carriers that pay appropriate access charges for the same point-to-point calls.[7] Without addressing the cost recovery impact on affected rural LECs, and without the development of a rational and non-discriminatory plan, any premature transformation of CMRS termination compensation to a bill-and-keep approach in rural service areas would only further exacerbate the overlapping effects on wireline services, LEC revenues, and discrimination in the interexchange service rates offered in rural areas.

The ability to invest in quality, advanced services networks depends on reasonable cost recovery. The ultimate recovery of costs from users of telecommunications must comport with the imperative that rates satisfy conditions of comparability, reasonableness, affordability and non-discrimination.[8] **Whether access charge revenue is eliminated directly, or indirectly by**

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[5](...continued)
AT&T Wireless at 15-24.

[6] For example, the New York MTA stretches from the Canadian border in northern New York and Vermont all the way to eastern portions of Pennsylvania and includes the majority of New York, all of Connecticut, and portions of New Jersey, in between.

[7] Compare the difference in the provisions of 47 C.F.R. §§ 51.701(b)(1) and (b)(2).

[8] The Commission only recently adopted an order (as yet not released) in the **MAG** proceeding that will alter the access cost recovery for small and rural LECs. It is not clear what relationship there **is** between this proceeding and the MAG proceeding. **A** decision in this proceeding could render the access charge decision moot. Because the Commission has not released its order in the MAG proceeding, the record in this proceeding is insufficient with respect to Rural Telephone Companies. The Rural Companies have not had the opportunity to analyze, (continued..)

blurring the lines that determine what traffic is considered access, the effect will be adverse without an effective and sufficient cost recovery replacement. Similarly, modifications in other intercarrier compensation arrangements, without an offsetting mechanism, will also result in adverse cost recovery and rate consequences.

11. SOME PARTIES HAVE ATTEMPTED TO UTILIZE THIS PROCEEDING TO DISTORT THE MEANING AND APPLICATION OF EXISTING INTERCONNECTION REQUIREMENTS.

A. LARGE LECs HAVE NO RIGHT TO ESTABLISH INTERCONNECTION FOR SMALL AND RURAL LECs.

Several commenting parties, ostensibly commenting on new approaches for intercarrier compensation, have attempted to utilize this proceeding to propose novel arrangements that would both conflict with established rules and policy and would deny small and rural telephone companies of their statutory rights. Some commenting parties suggest a form of "transit traffic" interconnection,' and others suggest that rural companies should have interconnection obligations that go well beyond their incumbent networks."

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*(...continued)
much less have any experience with, the effects of the recent decision.

[9] ***See, e.g.***, Sprint at 33-35, Verizon Wireless at 35.47, and Nextel Ex Parte dated October 2,2001. Despite Verizon Wireless's arguments, the provisions of reciprocal compensation for the transport and termination of telecommunications traffic pursuant to the Commission's Part 51, Subpart H rules do not apply with respect to indirect arrangements. There must be an interconnection between a CMRS licensee and a LEC for the disparate MTA criterion rule to apply. The MTA criterion does not apply with respect to an interconnection between two LECs. ***See*** 47 C.F.R. § 51.701(b) and (c)("between a LEC and a CMRS provider'' and "from the interconnection point between the two carriers"). Moreover, as explained in the text herein, a CMRS-LEC interconnection with a Bell Company does not establish, for the CMRS provider, interconnection with a separate rural telephone company.

[10] Generally, CLECs argue that incumbents should transport traffic around the LATA for the CLEC or that the CLEC should not be required to establish points of interconnection reasonably related to the area in which traffic is originated or terminated. ***See,*** *e.g.*, Cablevision (continued...)

The fact is that large carriers have undertaken a strategy to impose arbitrary, non-negotiated terms and conditions for connecting carrier arrangements and "interconnection" on smaller, neighboring LECs. This improper strategy has been adopted by large carriers under the guise that the Commission has somehow required the larger carriers to deliver third party carriers' traffic to small connecting LECs, irrespective of whether the large LEC has established a connecting carrier arrangement with the small LEC for this purpose, irrespective of whether the third party carrier has requested and negotiated interconnection with the small connecting LEC, and irrespective of whether the rights of the small LEC would be denied.

Neither the Act nor the Commission's rules address so-called "transit traffic arrangements" or three-party interconnection arrangements." The emergence of this concept can be traced to the questionable actions of some larger LECs (to be referred to as "Bell Companies") to force arrangements on smaller, rural incumbent LECs without agreement, without authorization, and without regard to the smaller LECs' rights. Whatever the intention of the commenting parties in this proceeding, the Commission should recognize, acknowledge, and understand the facts prior to accepting any self-serving comments regarding requirements and law.

Without explicit agreement to the contrary, a Bell Company is not authorized by a small LEC, and has no explicit right, to act as an "agent" for a rural company when the Bell Company negotiates and enters into interconnection agreements with CLECs and CMRS ("CLEC/CMRS")

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[10](...continued)
Lightpath, Inc. at 3; Level 3 at **27-28;** and Alliance Telecom, Inc. at **26-29.**

[11] All traffic is completed among carriers. In the absence of explicit, directly negotiated arrangements, "indirect interconnection" is satisfied by small and rural LECs through their access service offerings and arrangements with interexchange carriers.

carriers. Furthermore, in a competitive world, there can be no blanket arrangement which would allow a Bell Company to require small, rural LECs to subtend the Bell Company network. Bell Companies have negotiated bilateral agreements with CLEC/CMRS camers. The rural LECs are not parties to these agreements. Nevertheless, Bell Companies have apparently represented and offered to the CLEC/CMRS carriers a service arrangement whereby the Bell Company delivers CLEC/CMRS traffic to the network of rural companies without authorization. Regardless, an interconnection agreement that a CLEC/CMRS carrier may reach with a Bell Company does not and cannot establish interconnection with a non-party, rural telephone company. The Bell Companies have effectively attempted to establish themselves as the mandatory, central interconnection point for all carriers, and have attempted to effectively preempt any meaningful opportunity for smaller carriers to provide their own interconnection services, to design and provision their own network arrangements, or even to negotiate their own destiny as is their statutory right.[12]

Voluntary three-party arrangements may be possible if the rights and responsibilities of all parties are properly and fully addressed. However, there is no authorization for Bell Companies to proceed with transit arrangements unless and until all parties have consented to the

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[12] There has been no proceeding, policy analysis, or any examination of the public interest to conclude that large LECs (*i.e.*, Bell Companies) have been chosen to be the intermediary situated between all other competing carriers. A detrimental and chilling effect will overhang the promotion of competition if a framework is promoted whereby one large LEC is granted the status to be situated at the center, between all other competitors. This is of particular concern given that rural LECs are often the victims of unauthorized traffic, inaccurate measurement, lost settlements, fraud, and disputes with the large companies with respect to their abuse of connecting carrier arrangements. Smaller LECs cannot be forced to accept a Bell Company as an intermediary upon which the small LEC must depend or be forced to subtend the network of a competitor. Competition cannot proceed if a large company can simply impose its will on a small company.

arrangement and mutually agreeable terms and conditions have been established between the parties. Many small and rural LECs have lodged protests against Bell Companies about this unauthorized activity and have put the appropriate Bell Company on notice that it will be held responsible for the unauthorized use and/or abuse of existing connecting carrier arrangements.

The Bell Companies and the CLEC/CMRS carriers have proceeded to exercise their rights with each other to request, negotiate and enter into proper agreements that govern their relationship. The Bell Companies and these interconnecting partners have attempted to disregard and deny the rural carriers' rights and have generally failed to acknowledge the rural LECs as entities with rights separate and apart from Bell Companies.[13]

B. THE INTERCONNECTION OBLIGATIONS OF RURAL INCUMBENT LECs CANNOT EXTEND BEYOND THEIR OWN INCUMBENT NETWORKS AND LOCAL SERVICE OFFERINGS.

This proceeding has also spawned confusion and comment about transport obligations among carriers. These issues involve two concepts: (1) the obligations among carriers when new entrants seek interconnection points, or switch traffic at points, that are at a distance from the area in which traffic is originated and terminated;[14] and (2) how the relatively small network and calling scope of LECs should be reconciled with respect to CMRS-LEC interconnection that involves MTAs that are often hundreds to thousands times larger geographically than the LEC's actual operation and limits of its service offerings. Regardless of what confusion has emerged

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[13] With this discussion in mind, the analysis suggested by footnote **148** of the *NPRM* is inaccurate in that RBOCs do not have routine authorization, connecting carrier arrangements, or the right to the arrangements described in the text of the footnote. Moreover, RBOCs have abused their connecting carrier arrangements with smaller LECs. The footnote also suggests a compensation liability that is inconsistent with the facts. It is the RBOC that is responsible for the connecting carrier arrangements that it may have with smaller LECs when the RBOC arbitrarily undertakes to deliver traffic, on a transit basis, to the small LEC.

[14] See *NPRM* at para. 72.

regarding these issues, the Commission cannot establish sustainable regulations affecting small rural LECs that ignore technical network facts. Accordingly, the Rural Companies respectfully suggest that the Commission both acknowledge and be guided by the following common sense facts as it proceeds to develop an interconnection framework:

1. A small, incumbent LEC has no technical ability or obligation to interconnect at a point outside of its own network. A small LEC cannot possibly have network obligations beyond its own operation. An incumbent LEC has no obligation to interconnect with carriers at a geographic point where the incumbent is not a LEC.[15]

2. Similarly, a small, incumbent LEC cannot be forced involuntarily to obtain services from another LEC in order to offer network capabilities that go beyond the small, incumbent LEC's territory and its established local service boundaries.

3. If a call that both originates and terminates in the same local calling area (*i.e.*, a defined geographic area) must be hauled to a distant location and potentially back again, by virtue of the network design of interconnecting carrier, the responsibility for that back-and-forth transport is with the interconnecting carrier that has designed its network in this manner.

4. Furthermore, small LECs cannot be required to provide services that go beyond their service responsibility. Small and rural LECs provision calls to end-point locations beyond their local calling area by directing these calls to interexchange carriers.[16] The LEC's only involvement in such calls is to provide originating and terminating access services to the interexchange carrier that is the actual service provider. The LECs are compensated by the interexchange carrier for the access services provided, and the interexchange carrier is responsible for compensating any other carrier with which the interexchange carrier connects for purposes of completing the call. As the Commission has concluded, access calls are not within the scope of telecommunications subject to the terms of "reciprocal

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[15] *An* incumbent LEC's interconnection obligations only arise with respect to the geographic area within which it operates as an incumbent LEC. See 47 U.S.C. § 251(h)(1)-(1)(A) ("with respect to an area" that "on the date of enactment of the Telecommunications Act of 1996, [the LEC] provided telephone exchange service in such area. . . ."). *See also* 47 C.F.R. § 51.5 definition of "*Incumbent Local Exchange Carrier.*" *See further* 47 C.F.R. § 51.305(a) and (a)(2) ("interconnection with the incumbent LEC's network . . ." and "technically feasible point within the incumbent LEC's network . . . .").

[16] In instances where the rural LEC provides interexchange services, it does so separately from its local service offerings and in accordance with the Commission's equal access and toll dialing parity rules.

compensation for transport and termination."[17] The Act "preserves the legal distinction between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."[18]

5. Interconnection arrangements that have developed under which a Bell company may have interconnection responsibilities that extend across an entire LATA[19] do not logically or legally apply to small LECs. While a Bell Company's operations may extend across an entire LATA, the small LEC's operation does not. The service territory of the small LEC is the limit of its responsibility."

With these inescapable facts on the record, the Rural Companies respectfully conclude that

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[17] CMRS licensees have distorted this issue. ***See, e.g.***, Verizon Wireless at 35-47. A small LEC in eastern Pennsylvania does not provide any LEC service to its end users for interstate calling to locations throughout the five state area of the New York MTA. Instead, the interstate calls are toll calls, and the small LEC directs these calls to the toll carrier of the customer's choice. It is the interexchange carrier that is responsible for compensating a wireless carrier that may be operating in the New York MTA when that interexchange carrier delivers the call for termination to the wireless carrier's end user. ***See, e.g.***, Sprint at 37-43 ("CMRS carriers are entitled to receive compensation in the form of access charges when providing access services to interexchange carriers.").

[18] ***First Report and Order,*** In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd. 15499, 16013 (para. 1033) (1996) (***"First Report and Order"***). "Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier." ***Memorandum Opinion and Order,*** In the Matters of TSR Wireless, LLC, et al., Complainants, v. US West Communications, Inc. et al., Defendants, released June 21, 2000, in File Nos. E-98-13, E-98-15, E-98-16, E-98-17, and E-98-18 at para. 31.

[19] Bell Companies are often intraLATA toll service providers while most small rural LECs are not. Interconnection agreements between Bell Companies and local interconnecting carriers often voluntarily include unique arrangements for toll traffic that are different from the terms that apply under access tariff offerings. Some interconnecting carriers are confused and fail to recognize that these provisions, related to toll calls and unique arrangements, have no relevance or application to small LECs that are not intraLATA toll service providers.

[20] The concept of LATA was developed for Bell Companies and established the bounds of business restrictions imposed on these carriers. The concept is not relevant to the interconnection obligations of small LECs, or the services provided by a small LEC, unless a Bell Company is involved.

Commission should avoid the imposition of any interconnection plan or mechanism that fails to incorporate an understanding of these facts. **A** rural LEC is not and cannot undertake responsibility for the transport of telecommunications services beyond its local exchange carrier service boundaries or beyond its **own** physical network.

III. CONCLUSION

The potential adoption of any new intercarrier compensation framework, including a bill-and-keep approach, presents issues that have not been addressed in this proceeding. The general proposals and policy questions raised by the *NPRM* have not provided a record upon which a rational plan can be developed with respect to intercarrier compensation mechanisms with the Rural Companies. The Rural Companies urge the Commission to refine and more clearly identify and address potential changes and their ramifications. Therefore, the Commission should provide the industry with the opportunity to evaluate fully any proposal and potential effects prior to moving forward with what would be profound changes.

In addressing the record, the Commission should reject those comments that suggest that large LECs should be allowed improperly to establish interconnection arbitrarily on behalf of small LECs, in denial of small LECs' rights. Also, the Commission should be guided by the facts set forth in this Reply that demonstrate that the interconnection obligations of rural incumbent LECs cannot extend beyond their own incumbent networks and local service offerings.

Finally, the Rural Companies respectfully submit that any changes in intercamer compensation must include the development of alternative cost recovery sources that will preserve a rational pricing and cost recovery system that will promote investment in modern and advanced networks in higher cost, rural areas.

Respectfully submitted,

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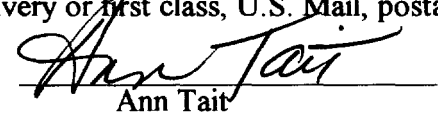
CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance" was served on this 5th day of November 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:



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